IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2288 OF 2007
WITH
CROSS-OBJECTION (ST) NO. 18180 OF 2007
IN
FIRST APPEAL NO. 1361 OF 2007

Thakurbhai Kuwarji Rathod ..Applicant
V/s
Pramodbhai Kalidas @ Ramkrishna
Oza and others ..Respondents.

Mr. Navin Parikh i/b Bhavna Shah for the applicant in C.A. No.2288/2007 and for the Respondents in Cross Objection No. 18180/2007.

Mr. P.K. Dhakephalkar, Sr. Counsel i/b Mr./ Jayesh BNhatt for Respondent No.s 1,3,4,6 and 7 and for appellant in Cross Objection No.18180/07.

CORAM : J.N. PATEL AND
A.A. SAYED, JJ.

DATE : 7TH SEPTEMBER, 2007

P.C.

1. Heard.

2. The applicant has filed an application for seeking stay of the operation of the impugned Judgment and Decree dated 29th December, 2006 passed in Special Civil Suit No. 6/1998 by the learned trial Court and for seeking injunction restraining the respondent-original defendants, their agents and

servants from in any manner interfering, obstructing or disturbing the quiet, vacant and peceful possession, use and enjoyment and cultivation of the suit land being survey No. 327 of Village Galonda, admeasuring 3 Hectors and 12 Ares and creating third party rights in respect of suit land.

3. The application is contested by the respondents-original defendants on the ground that the possession is with the respondents and therefore, such an order cannot be passed to disturb the defendants from the suit land as admittedly the defendants are the owners of the suit land. The right to continue in possession after the appellant-plaintiff has lost his suit claim for spefific performance of contract stands extinguished.

4. We have heard the leanred Counsel for the parties and gone through the evidence on record. Prima facie we find that in view of the admission given by the defendant in his evidence that the plaintiff, is in possession, use and occuaption of the suit land, it will be proper that the plaintiff-appellant is allowed to be in possession of

the suit land, and cultivate the same without any interference form the respondents-defenants.

5. Such a relief can be granted in favour of the appellant on imposing certain terms and conditions, including that of depositing use and occupation charges which according to the defendants was being paid towards licence fees for cultivating the said land. It was the case of the respondents-defendants that sum of Rs. 50,000/- was to be paid as licence fees by the appellant-plaintiff and he was only given right to cultivate the suit land. Therefore, we pass the following order.

. The application is allowed in terms of prayer clause (a) and (b) on the conditions that the appellant shall deposit sum of Rs. 50,000/- per annum from the year 1997-98 onwards, and so far as for the period 1997-98 till 2005-2006, the appellant shall furnish security to the satisfaction of the trial Court for the sum which is required to be paid towards the use and occupation charges i.e. at the rate of Rs.50,000/- per annum and shall deposit in the trial Court a sum of Rs. 50,000/- per anunm

commencing from 2006-07 and 2007-08 on or before 31st March, 2008 and for the further year i.e. from 2008-09 onwards or before 31st March of the financial year. On such amount being deposited, the trial Court would invest the said amount in term deposit initially for a period of 37 months in a Nationalised Bank of the choice of the respondents-defendants and to be renewed from time to time until further orders. Application stands disposed of accordingly with no order as to costs.

6. Cross-objection filed by the respondents is admitted.

7. The learned Counsel for the respondents states that respondnets have already sold the property and that he wants time to file affidavit-in-reply. S.O. for two weeks.

(J.N. PATEL, J.)

(A.A. SAYED, J.)